

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WAYNE ELMORE,

Plaintiff,

No. CIV S-04-2657 GEB EFB P

vs.

TOM L. CAREY, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a prisoner without counsel proceeding *in forma pauperis* on claims of alleged civil rights violations. *See* 42 U.S.C. § 1983; 28 U.S.C. § 1915. The action proceeds on plaintiff's October 14, 2005, first amended complaint.

On April 27, 2006, process was returned unexecuted because defendant Solomon could not be located. On May 11, 2006, the court directed plaintiff to discover defendant Solomon's whereabouts and gave him time to submit papers to again attempt service of process on this defendant. Plaintiff complied, and on June 14, 2006, the court directed the United States Marshal to serve process on defendant Solomon. On May 17, 2007, service again was returned unexecuted because defendant Solomon could not be located. On July 31, 2007, plaintiff filed a document conceding that he cannot obtain an address at which defendant Solomon could be served with process.

1 Service of process must be effected within 120 days of the filing of the complaint unless
2 plaintiff demonstrates good cause. Fed. R. Civ. P. 4(m).

3 The court has given plaintiff two opportunities to locate defendant Solomon and warned
4 plaintiff that if this defendant is not served the action would be dismissed with respect to him.
5 Plaintiff concedes that he cannot effect service on this defendant.

6 Accordingly, the court recommends that this action be dismissed without prejudice with
7 respect to defendant Solomon.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after
10 being served with these findings and recommendations, any party may file written objections
11 with the court and serve a copy on all parties. Such a document should be captioned "Objections
12 to Magistrate Judge's Findings and Recommendations." Failure to file objections within the
13 specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158
14 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: September 6, 2007.

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18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
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